

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**NEW AGE AUTO REPAIR;
MARIO PEREZ RIVAS**
3817 Sepulveda Blvd., #H
Culver City, CA 90230

Automotive Repair Dealer Registration
No. AC 182754
Smog Check Test Only Station License
No. TC 182754

and

MARIO PEREZ RIVAS
9625 Birchdale Ave.
Downey, CA 90240

Smog Check Technician License No. EA 022565

Respondent.

Case No. 79/08-34


OAH No. 2008030576

DECISION

The attached Stipulated Revocation of License and Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective 3/23/09.

DATED: February 18, 2009



PATRICIA HARRIS
Deputy Director, Board/Bureau Support
Department of Consumer Affairs

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER, State Bar No. 192083
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **NEW AGE AUTO REPAIR; MARIO PEREZ**
RIVAS

14 3817 Sepulveda Blvd. #H
Culver City, CA 90230

15 Automotive Repair Dealer Registration No. AC 182754
16 Smog Check Test Only Station License No. TC
17 182754,

18 and

19 **MARIO PEREZ RIVAS**

20 9625 Birchdale Ave.
Downey, CA 90240

21 Smog Check Technician License No. EA 022565

22 Respondent.

Case No. 79/08-34

OAH No. 2008030576

STIPULATED REVOCATION
OF LICENSE AND ORDER

23 In the interest of a prompt and speedy resolution of this matter, consistent with the
24 public interest and the responsibilities of the Director of Consumer Affairs and the Bureau of
25 Automotive Repair the parties hereby agree to the following Stipulated Revocation and
26 Disciplinary Order which will be submitted to the Director for her approval and adoption as the
27 final disposition of the Accusation.

28 ///

1 PARTIES

2 1. Sherry Mehl (Complainant) is the Chief of the Bureau of Automotive
3 Repair (I/M Smog). She brought this action solely in her official capacity and is represented in
4 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Nancy A.
5 Kaiser, Deputy Attorney General.

6 2. New Age Auto Repair; Mario Perez Rivas (Respondent) is represented in
7 this proceeding by attorney Frederick M. Ray, whose address is 770 The City Drive, Suite 8100
8 Orange, CA 92868-6927.

9 3. On or about March 14, 1995, the Bureau of Automotive Repair (I/M
10 Smog) issued Automotive Repair Dealer Registration No. AC 182754 to New Age Auto Repair;
11 Mario Perez Rivas (Respondent). The Automotive Repair Dealer Registration was in full force
12 and effect at all times relevant to the charges brought in Accusation No. 79/08-34 and will expire
13 on March 31, 2009, unless renewed.

14 4. On or about May 2, 1995, the Bureau of Automotive Repair (I/M Smog)
15 issued Smog Check Test Only Station License No. TC 182754 to New Age Auto Repair; Mario
16 Perez Rivas (Respondent). The License was in full force and effect at all times relevant to the
17 charges brought in Accusation No. 79/08-34 and will expire on March 31, 2009, unless renewed.

18 5. In or about 1996, the Bureau issued Smog Check Technician License
19 Number EA 022565 to Respondent. The Smog Check Technician License was in full force and
20 effect at all times relevant to the charges brought herein and will expire on July 31, 2010, unless
21 renewed.

22 JURISDICTION

23 6. Accusation No. 79/08-34 was filed before the Director of Consumer
24 Affairs, State of California (Director) for the Bureau of Automotive Repair (Bureau), and is
25 currently pending against Respondent. The Accusation and all other statutorily required
26 documents were properly served on Respondent on January 9, 2008. Respondent timely filed his
27 Notice of Defense contesting the Accusation. A copy of Accusation No. 79/08-34 is attached as
28 **Exhibit A** and incorporated herein by reference.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6
7
8
9
10
11
12

13

14

15

16
17
18
19
20

21
22
23
24

25

26
27
28

notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Revocation of Licenses and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Revocation of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. AC 182754 issued to Respondent New Age Auto Repair; Mario Perez Rivas is permanently invalidated and Smog Check Test Only Station License No. TC 182754 issued to Respondent New Age Auto Repair; Mario Perez Rivas and Smog Check Technician License issued to Mario Perez Rivas are revoked and accepted by the Director.

15. The permanent invalidation of Respondent's Automotive Repair Dealer Registration and the revocation of Respondent's Smog Check Test Only Station License and Smog Check Technician License shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Bureau.

16. Respondent shall lose all rights and privileges as an Automotive Repair Dealer, Smog Check Test Only Station, and Smog Check Technician in California as of the effective date of the Director's Decision and Order.

///

17. Respondent shall cause to be delivered to the Bureau his Automotive Repair Dealer Registration's, Smog Check Technician License's, and Smog Check Technician License's wall license certificates and, if issued, pocket licenses on or before the effective date of the Decision and Order.

18. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a new application for registration and/or licensure. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 79/08-34 shall be deemed to be true, correct and admitted by Respondent when the Director determines whether to grant or deny the petition.

19. Respondent shall pay the Bureau its costs of investigation and enforcement in the amount of **\$25,000.00** at the time of application for a new registration or license issued by the Bureau.

ACCEPTANCE

I have carefully read the above Stipulated Revocation of License and Order and have fully discussed it with my attorney, Frederick M. Ray. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, Smog Check Test Only Station License, and Smog Check Technician License. I enter into this Stipulated Revocation of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director.

DATED: _____

(signature attached)
 Mario Perez Rivas dba New Age Auto Repair and as an
 Individual
 Respondent

///

///

1 17. Respondent shall cause to be delivered to the Bureau his Automotive
2 Repair Dealer Registration's, Smog Check Technician License's, and Smog Check Technician
3 License's wall license certificates and, if issued, pocket licenses on or before the effective date of
4 the Decision and Order.

5 18. Respondent fully understands and agrees that if he ever files an application
6 for licensure or a petition for reinstatement in the State of California, the Bureau shall treat it as a
7 new application for registration and/or licensure. Respondent must comply with all the laws,
8 regulations and procedures for reinstatement of a revoked license in effect at the time the petition
9 is filed, and all of the charges and allegations contained in Accusation No. 79/08-34 shall be
10 deemed to be true, correct and admitted by Respondent when the Director determines whether to
11 grant or deny the petition.

12 19. Respondent shall pay the Bureau its costs of investigation and enforcement
13 in the amount of ~~\$36,524.18~~ ^{\$25,000} at the time of application for a new registration or license issued by
14 the Bureau.

15 ACCEPTANCE

16 I have carefully read the above Stipulated Revocation of License and Order and
17 have fully discussed it with my attorney, Frederick M. Ray. I understand the stipulation and the
18 effect it will have on my Automotive Repair Dealer Registration, Smog Check Test Only Station
19 License, and Smog Check Technician License. I enter into this Stipulated Revocation of License
20 and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and
21 Order of the Director.

22 DATED: 1/5/08

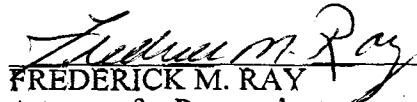
23
24 
25 Mario Perez Rivas dba New Age Auto Repair and as an
26 Individual
27 Respondent
28

///

///

1 I have read and fully discussed with Respondent New Age Auto Repair; Mario
2 Perez Rivas the terms and conditions and other matters contained in this Stipulated Revocation
3 of License and Order. I approve its form and content.

4 DATED: 1/5/09

5
6 
7 FREDERICK M. RAY
8 Attorney for Respondent


9 ENDORSEMENT

10 The foregoing Stipulated Revocation of License and Order is hereby respectfully
11 submitted for consideration by the Director.

12
13 DATED: 1/13/09

14 EDMUND G. BROWN JR., Attorney General
15 of the State of California

16 GREGORY J. SALUTE
17 Supervising Deputy Attorney General

18 
19 NANCY A. KAISER
20 Deputy Attorney General
21 Attorneys for Complainant
22
23
24
25
26
27
28

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 BRIAN G. WALSH, State Bar No. 207621
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2535
6 Facsimile: (213) 897-2804
7 Attorneys for Complainant

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 79/08-34

12 NEW AGE AUTO REPAIR;
13 MARIO PEREZ RIVAS
3817 Sepulveda Blvd. #H
14 Culver City, CA 90230

OAH No.

A C C U S A T I O N

(S M O G C H E C K)

15 Automotive Repair Dealer Registration
No. AC 182754
16 Smog Check Test and Repair Station License
No. RC 182754

17 and

18 MARIO PEREZ RIVAS
19 9625 Birchdale Ave.
Downey, CA 90240

20 Smog Check Technician License No. EA 022565

21 Respondents.

22
23 Complainant alleges:

24 **PARTIES**

- 25 1. Sherry Mehl (Complainant) brings this Accusation solely in her official
26 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.
27 2. On or about March 14, 1995, the Bureau of Automotive Repair (Bureau)
28 issued Automotive Repair Dealer Registration Number AC 182754 to Mario Perez Rivas dba

1 New Age Auto Repair (Respondent). The Automotive Repair Dealer Registration was in full
2 force and effect at all times relevant to the charges brought herein and will expire on March 31,
3 2008, unless renewed.

4 3. On or about May 2, 1995, the Bureau issued Smog Check Test and Repair
5 Station License Number RC 182754 to Respondent. The Smog Check Test and Repair Station
6 License was in full force and effect at all times relevant to the charges brought herein and will
7 expire on March 31, 2008, unless renewed.

8 4. In or about 1996, the Bureau issued Smog Check Technician License
9 Number EA 022565 to Respondent. The Smog Check Technician License was in full force and
10 effect at all times relevant to the charges brought herein and will expire on July 31, 2008, unless
11 renewed.

12 **JURISDICTION**

13 5. This Accusation is brought before the Director of Consumer Affairs
14 (Director) for the Bureau under the authority of the following laws. All section references are to
15 the Business and Professions Code unless otherwise indicated.

16 **STATUTORY PROVISIONS**

17 6. Section 125.3 of the Code provides, in pertinent part, that a Board may
18 request the administrative law judge to direct a licensee found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 7. Section 477 of the Code provides, in pertinent part, that "Board" includes
22 "bureau," "commission," "committee," "department," "division," "examining committee,"
23 "program," and "agency." "License" includes certificate, registration or other means to engage
24 in a business or profession regulated by the Code.

25 ///

26 ///

27 ///

28 ///

1 8. Section 490 of the Code provides, in pertinent part, that a board may
2 suspend or revoke a license when it finds that the licensee has been convicted of a crime
3 substantially related to the qualifications, functions or duties of the business or profession for
4 which the license was issued.

5 9. Section 9884.7 of the Code states:

6 (a) The director, where the automotive repair dealer cannot show there
7 was a bona fide error, may refuse to validate, or may invalidate temporarily or
8 permanently, the registration of an automotive repair dealer for any of the
9 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

10 (1) Making or authorizing in any manner or by any means whatever
11 any statement written or oral which is untrue or misleading, and which is known,
12 or which by the exercise of reasonable care should be known, to be untrue or
misleading.

13

14 (6) Failure in any material respect to comply with the provisions of
15 this chapter [the Automotive Repair Act (Bus. & Prof. Code, 9880, et seq.)] or
regulations adopted pursuant to it.

16 (7) Any willful departure from or disregard of accepted trade standards
17 for good and workmanlike repair in any material respect, which is prejudicial to
another without consent of the owner or his or her duly authorized representative.

18 (8) Making false promises of a character likely to influence, persuade,
19 or induce a customer to authorize the repair, service, or maintenance of
automobiles.

20 10. Section 9884.8 of the Code states:

21 All work done by an automotive repair dealer, including all warranty
22 work, shall be recorded on an invoice and shall describe all service work done and
23 parts supplied. Service work and parts shall be listed separately on the invoice,
24 which shall also state separately the subtotal prices for service work and for parts,
25 not including sales tax, and shall state separately the sales tax, if any, applicable to
26 each. If any used, rebuilt, or reconditioned parts are supplied, the invoice shall
27 clearly state that fact. If a part of a component system is composed of new and
28 used, rebuilt or reconditioned parts, that invoice shall clearly state that fact. The
invoice shall include a statement indicating whether any crash parts are original
equipment manufacturer crash parts or nonoriginal equipment manufacturer
aftermarket crash parts. One copy of the invoice shall be given to the customer
and one copy shall be retained by the automotive repair dealer.

1 11. Section 9884.9(a) of the Code states:

2 The automotive repair dealer shall give to the customer a written estimated
3 price for labor and parts necessary for a specific job. No work shall be done and
4 no charges shall accrue before authorization to proceed is obtained from the
5 customer. No charge shall be made for work done or parts supplied in excess of
6 the estimated price without the oral or written consent of the customer that shall
7 be obtained at some time after it is determined that the estimated price is
8 insufficient and before the work not estimated is done or the parts not estimated
9 are supplied. Written consent or authorization for an increase in the original
10 estimated price may be provided by electronic mail or facsimile transmission from
11 the customer. The bureau may specify in regulation the procedures to be followed
12 by an automotive repair dealer if an authorization or consent for an increase in the
13 original estimated price is provided by electronic mail or facsimile transmission.
14 If that consent is oral, the dealer shall make a notation on the work order of the
15 date, time, name of person authorizing the additional repairs and telephone
16 number called, if any, together with a specification of the additional parts and
17 labor and the total additional cost, and shall do either of the following:

18 (1) Make a notation on the invoice of the same facts set forth in the
19 notation on the work order.

20 (2) Upon completion of the repairs, obtain the customer's signature or
21 initials to an acknowledgment of notice and consent, if there is an oral consent of
22 the customer to additional repairs, in the following language:

23 I acknowledge notice and oral approval of an
24 increase in the original estimated price.

25 _____
26 (signature or initials)

27 Nothing in this section shall be construed as requiring an automotive
28 repair dealer to give a written estimated price if the dealer does not agree to
perform the requested repair.

1 12. Section 9884.13 of the Code provides, in pertinent part, that the expiration
2 of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a
3 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
4 registration temporarily or permanently.

5 13. California Code of Regulations, title 16, section 3340.15, subsection (i)
6 states:

7 A licensed smog check station shall not sublet inspections or repairs
8 required as part of the Smog Check Program, except for the following:

9 (1) Repairs of a vehicle's exhaust system which are normally
10 performed by muffler shops, provided that the malfunction has

1 been previously diagnosed by the specific smog check station
2 originally authorized by the customer to perform repairs to the vehicle.

3 (2) Repairs of those individual components that have been
4 previously diagnosed as being defective and that have been
5 removed by the specific smog check station originally authorized
6 by the customer to perform repairs to the vehicle.

7 14. California Code of Regulations, title 16, section 3340.30, subsection (a)
8 states:

9 A licensed technician shall inspect, test and repair vehicles in accordance
10 with section 44012 of the Health and Safety Code, section 44035 of the Health
11 and Safety Code, and section 3340.42 of this article [Mandatory Emissions
12 Inspection Standards and Test Procedures].

13 15. California Code of Regulations, title 16, section 3340.41, subsection (c),
14 states:

15 No person shall enter into the emissions inspection system any vehicle
16 identification information or emission control system identification data for any
17 vehicle other than the one being tested. Nor shall any person knowingly enter into
18 the emissions inspection system any false information about the vehicle being tested.

19 16. California Code of Regulations, title 16, section 3340.41, subsection (d),
20 states:

21 The specifications and procedures required by Section 44016 of the Health
22 and Safety Code shall be the vehicle manufacturer's recommended procedures for
23 emission problem diagnosis and repair or the emission diagnosis and repair
24 procedures found in industry-standard reference manuals and periodicals
25 published by nationally recognized repair information providers. Smog check
26 stations and smog check technicians shall, at a minimum, follow the applicable
27 specifications and procedures when diagnosing defects or performing repairs for
28 vehicles that fail a smog check test.

 17. California Code of Regulations, title 16, section 3353, states:

 No work for compensation shall be commenced and no charges shall
accrue without specific authorization from the customer in accordance with the
following requirements:

 (a) Estimate for Parts and Labor. Every dealer shall give to each
customer a written estimated price for labor and parts for a specific job.

1 18. California Code of Regulations, title 16, section 3356, subsection (a)
2 states:

3 All invoices for service and repair work performed, and parts supplied, as
4 provided for in Section 9884.8 of the Business and Professions Code, shall
5 comply with the following:

6 (1) The invoice shall show the automotive repair dealer's registration
7 number and the corresponding business name and address as shown in the
8 Bureau's records. If the automotive repair dealer's telephone number is shown, it
9 shall comply with the requirements of subsection (b) of Section 3371 of this
10 chapter.

11 (2) The invoice shall separately list, describe and identify all of the
12 following:

13 (A) All service and repair work performed, including all diagnostic and
14 warranty work, and the price for each described service and repair.

15 (B) Each part supplied, in such a manner that the customer can
16 understand what was purchased, and the price for each described part. The
17 description of each part shall state whether the part was new, used, reconditioned,
18 rebuilt, or an OEM crash part, or a non-OEM aftermarket crash part.

19 (C) The subtotal price for all service and repair work performed.

20 (D) The subtotal price for all parts supplied, not including sales tax.

21 (E) The applicable sales tax, if any.

22 19. California Code of Regulations, title 16, section 3371, states:

23 No dealer shall publish, utter, or make or cause to be published, uttered, or
24 made any false or misleading statement or advertisement which is known to be
25 false or misleading, or which by the exercise of reasonable care should be known
26 to be false or misleading. Advertisements and advertising signs shall clearly show
27 the following:

28 (a) Firm Name and Address. The dealer's firm name and address as
they appear on the State registration certificate as an automotive repair dealer; and

(b) Telephone Number. If a telephone number appears in an
advertisement or on an advertising sign, this number shall be the same number as
that listed for the dealer's firm name and address in the telephone directory, or in
the telephone company records if such number is assigned to the dealer
subsequent to the publication of such telephone directory.

20. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an
estimate, invoice, or work order, or record required to be maintained by section
3340.15(f) of this chapter, withhold therefrom or insert therein any statement or

1 information which will cause any such document to be false or misleading, or
2 where the tendency or effect thereby would be to mislead or deceive customers,
prospective customers, or the public."

3 21. California Health and Safety Code section 44016 provides that licensed
4 repair facilities shall perform all repairs in accordance with manufacturers' specifications and
5 procedures.

6 **UNDERCOVER VEHICLE OPERATION No. 1:**

7 **MARCH 23, 2006 TO MARCH 27, 2006**

8 22. On or about the dates from March 23, 2006 March 27, 2006, Bureau
9 Program Representative Arnulfo Santana (Representative Santana) conducted an undercover
10 vehicle operation at New Age Auto Repair (New Age Auto). The Bureau's vehicle, a 1986
11 Chevrolet Monte Carlo (1986 Chevrolet), California License No. 1RCE654, was prepared by
12 Bureau Representative Steven M. Gauronski (Representative Gauronski) of the Rialto
13 Documentation Laboratory. Representative Gauronski prepared the 1986 Chevrolet by creating
14 an open electrical ground in the throttle position sensor circuit.

15 23. Representative Santana then instructed Bureau Operator Maria T. Aleman
16 (Ms. Aleman) to drive the 1986 Chevrolet to New Age Auto and to ask for a smog inspection.
17 Representative Santana instructed Ms. Aleman to authorize any diagnosis and/or repairs that any
18 employee of New Age Auto said were necessary for the 1986 Chevrolet to pass a smog
19 inspection. A New Age Auto employee named "Tony" told Ms. Aleman that the 1986 Chevrolet
20 would not pass inspection because the "check engine" light was on. Tony gave Ms. Aleman an
21 estimate of \$60 to perform a diagnosis to find out why the check engine light was on. Ms.
22 Aleman signed a work order for the diagnosis and Tony gave her a copy of this work order.

23 24. Later that same day, March 23, 2006, Tony called Ms. Aleman and told
24 her that some electrical problems needed to be fixed for \$185.00. Ms. Aleman authorized these
25 repairs over the phone. On March 24, 2006, the next day, Tony told Ms. Aleman that the vehicle
26 also needed a manifold absolute pressure sensor, oxygen sensor, tune-up and oil change, at a total
27 cost of \$542.00, in order to pass smog inspection. Ms. Aleman authorized these repairs over the
28 phone.

1 25. On March 27, 2006, Ms. Aleman picked up the 1986 Chevrolet from New
2 Age Auto and paid Tony a total of \$559.20 in cash. Ms. Aleman returned the car to
3 Representative Santana and turned over relevant documents to him, including a Pretest Mode
4 Vehicle Inspection Report dated March 23, 2006; a "Pass" Vehicle Inspection Report dated
5 March 25, 2006 with Certificate of Compliance No. GC419518; and Invoice No. EA022565,
6 which listed Respondent Rivas as the technician who performed the tests.

7 26. On March 28, 2006, the 1986 Chevrolet was returned to Representative
8 Gauronski in order to be re-examined. Representative Gauronski determined that the spark
9 plugs, oxygen sensor, and vacuum map/sensor were unnecessarily replaced. He also determined
10 that the TPS ground circuit had been repaired, although this repair was not mentioned on the
11 repair invoice. Repairing the TPS ground circuit was the only repair necessary for the 1986
12 Chevrolet to pass smog inspection.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(False and Misleading Statements)**

15 27. Respondent is subject to disciplinary action under Code section 9884.7,
16 subsection (a)(1); Code section 9884.7, subsection (a)(8); Health and Safety Code section 44016;
17 and California Code of Regulations, title 16, section 3371, for making false and misleading
18 statements to Ms. Aleman on March 23, 2006, in order to entice her to authorize the unnecessary
19 replacement of spark plugs, oxygen sensor, and vacuum/manifold absolute pressure sensor.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Performing Unnecessary Repairs)**

22 28. Respondent is subject to disciplinary action under Code section 9884.7,
23 subsection (a)(6); and California Code of Regulations, title 16, sections 3340.30, subsection (a)
24 and 3340.41, subsection (d), for performing unnecessary repairs on the 1986 Chevrolet.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Entering False Information Into Database)**

27 29. Respondent is subject to discipline under code section 9884.7, subsection
28 (a)(6), and California Code of Regulations, title 16, section 3340.41, subsection (c), for entering

1 false data into a state database about the reason why the manifold absolute pressure sensor and
2 oxygen sensor needed replacement.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Properly Document Invoice)**

5 30. Respondent is subject to discipline under Code section 9884.7,
6 subsection (a)(1); Code section 9884.7, subsection (a)(6); and California Code of Regulations,
7 title 16, section 3373, for failing to document the correct estimate and for failing to document
8 repair of the TPS circuit on the 1986 Chevrolet on or about March 23, 2006, to March 27, 2006.

9 **UNDERCOVER VEHICLE OPERATION No. 2:**

10 **MAY 4, 2006 TO MAY 9, 2006**

11 31. On or about the dates from May 4, 2006 to May 9, 2006, Representative
12 Santana conducted a second undercover vehicle operation. The vehicle used for this operation
13 was a 1984 Chevrolet Monte Carlo (1984 Chevrolet), California License No. 2RXZ614. Bureau
14 Representative Daniel Woods (Representative Woods) of the Rialto Documentation Laboratory
15 prepared the 1984 Chevrolet by breaking the ground wire to the mixture control solenoid, which
16 caused the "Check Engine" light to come on. This condition also caused the vehicle to fail the
17 smog inspection as a Gross Polluter.

18 32. Representative Santana instructed Bureau Operator Debra Hooper
19 (Operator Hooper) to drive to New Age Auto to ask for a smog inspection, and to authorize any
20 diagnosis and repair that a New Age Auto employee represents as necessary for the 1984
21 Chevrolet to pass inspection. On May 4, 2006, Operator Hooper dealt with two New Age Auto
22 employees, identified as "Mario" and "Tony" by the names on their shirts.

23 33. The 1984 Chevrolet was inspected and Operator Hooper was provided
24 with a work order to sign. After the inspection, Tony informed Ms. Hooper that the 1984
25 Chevrolet had failed the smog inspection, and that a \$60.00 diagnosis was necessary to determine
26 the cause. Tony gave Operator Hooper a second work order for the diagnosis, but did not ask her
27 to sign it. Operator Hooper authorized the work. Tony later called Operator Hooper and told her
28 that the exhaust gas recirculation valve and the mixture control solenoid needed to be replaced,

1 and the carburetor needed to be rebuilt. Tony told Operator Hooper that these repairs were
2 necessary for the 1984 Chevrolet to pass smog inspection. Operator Hooper authorized the
3 repairs, and subsequently paid Tony a total of \$661.31 for the smog inspection and repairs. A
4 second inspection was performed on May 9, 2006. The 1984 Chevrolet passed this inspection.
5 However, a certificate of compliance was not issued because the vehicle had to be certified at a
6 Test-Only station.

7 34. Representative Santana reviewed the Vehicle Information Database data
8 that had been entered for the May 4, 2006 inspection and the May 9, 2006 inspection. The data
9 for the May 4, 2006 inspection indicated that the 1984 Chevrolet failed due to high emissions
10 (Gross Polluter) and a "check engine" malfunction. The data also stated that engine speed failure
11 was the reason for the ignition timing failure. Finally, the data indicate the smog inspection was
12 conducted at New Age Auto by Mario Rivas.

13 35. The data for the May 9, 2006 inspection indicated that this inspection was
14 also performed at New Age Auto by Mario Rivas. The vehicle was tested in Pretest Mode. As
15 noted above, the vehicle passed the inspection but was not issued a certificate of compliance
16 because it had to be certified at a Test-Only station.

17 36. On May 18, 2006, the 1984 Chevrolet was returned to Representative
18 Woods at the Rialto Documentation Laboratory. After examining the vehicle, Representative
19 Woods determined that the exhaust gas recirculation valve and the mixture control solenoid were
20 replaced, but that these parts did not need to be replaced. Representative Woods also found that
21 the carburetor had been unnecessarily overhauled, the mixture control solenoid was not adjusted
22 properly, and the carburetor had not been overhauled correctly. The misadjusted control solenoid
23 caused the vehicle to run poorly and to fail a smog inspection that Representative Woods
24 performed (after all the repairs) due to high tailpipe emissions. Also, the gas cap was missing.
25 (New Age Auto had called Operator Hooper to request that she bring the 1984 Chevrolet back to
26 get the gas cap, but Operator Hooper never returned with the vehicle.) In conclusion,
27 Representative Woods determined that the 1984 Chevrolet was still in a failing mode, and that a
28 "Pass" should not have been entered in the Vehicle Inspection Report.

1 **FIFTH CAUSE OF ACTION**

2 **(False and Misleading Statements)**

3 37. Respondent is subject to disciplinary action under Code section 9884.7,
4 subsection (a)(1); Code section 9884.7, subsection (a)(7); Code section 9884.7, subsection (a)(8);
5 Health and Safety Code section 44016; and California Code of Regulations, title 16, section
6 3371, for making false and misleading statements to Operator Hooper on or about May 4, 2006,
7 in order to entice her to authorize unnecessary repairs, including the replacement of the mixture
8 control solenoid and the exhaust gas recirculation valve, and the rebuilding of the carburetor.

9 **SIXTH CAUSE OF ACTION**

10 **(Performing Unnecessary and Improper Repairs)**

11 38. Respondent is subject to disciplinary action under Code section 9884.7,
12 subsection (a)(1); Code section 9884.7, subsection (a)(6); Code section 9884.7, subsection (a)(7)
13 and California Code of Regulations, title 16, sections 3340.30, subsection (a) and 3340.41,
14 subsection (d), for performing unnecessary and improper repairs on the 1986 Chevrolet.

15 **SEVENTH CAUSE OF ACTION**

16 **(Failure to Properly Document Invoice)**

17 39. Respondent is subject to discipline under Code section 9884.7,
18 subsection (a)(1); Code section 9884.7, subsection (a)(6); and California Code of Regulations,
19 title 16, section 3373, for failing to document the correct estimate for repairs to the 1984
20 Chevrolet on or about May 4, 2006 to May 9, 2006.

21 **UNDERCOVER VEHICLE OPERATION No. 3:**

22 **OCTOBER 25, 2006 TO OCTOBER 30, 2006**

23 40. On or about the dates from October 25, 2006 to October 30, 2006,
24 Mr. Santana conducted a third undercover vehicle operation. The vehicle used for this operation
25 was a 1992 Toyota Corolla (1992 Toyota), California License No. 2ZHN581. Representative
26 Gauronski of the Rialto Documentation Laboratory prepared the 1992 Toyota Corolla by
27 installing a defective oxygen sensor and a defective exhaust gas recirculation vacuum modulator.
28 This condition caused the 1992 Toyota to fail to smog inspection as a Gross Polluter and also

1 caused the "check engine light to be illuminated. Representative Santana directed Bureau
2 Operator Jerry E. Cole (Operator Cole) to go to New Age Auto to ask for a smog inspection, and
3 to authorize any repairs that New Age Auto employees represented as necessary for the 1992
4 Toyota to pass smog inspection.

5 41. Operator Cole went to New Age Auto on October 25, 2006, and dealt with
6 two employees of New Age Auto, identified as "Mario" and "Tony" by the names on their shirts.
7 Tony gave Operator Cole a work order to sign to authorize the smog inspection. After the
8 inspection, Tony informed Operator Cole that the 1992 Toyota had failed the inspection, and that
9 a \$65.00 diagnosis was necessary to determine the cause. Operator Cole authorized this \$65.00
10 diagnosis and then received a copy of a second work order. Tony later called Operator Cole and
11 told him that the exhaust gas recirculation valve sensor, oxygen sensor, and throttle body needed
12 to be replaced, and that the vehicle needed a complete tune-up in order to pass smog inspection.
13 Operator Cole authorized these repairs. Before Operator Cole picked up the 1992 Toyota, Tony
14 called again to say that he was adding an additional \$60.00 to the final bill because the 1992
15 Toyota had to be taken to a Test-Only station to get tested and certified. On October 30, 2006,
16 Operator Cole picked up the 1992 Toyota from New Age Auto, and paid Tony a total of \$626.00
17 in cash for the smog inspections and repairs. Operator Cole gave Representative Santana
18 relevant documents, including the invoice (No. 004578, dated October 30, 20096, for \$566.50);
19 two New Age Auto Vehicle Inspection Reports, one dated October 25, 2006, with result of gross
20 polluter, and one dated October 28, 2006 with the result of "Pass"; and a Vehicle Inspection
21 Report from Smogs Just Smogs VII with the result of "Pass" and Certificate No. VB783503
22 printed on it.

23 42. Representative Santana later reviewed the Vehicle Information Database
24 data for the inspections performed on the 1992 Toyota between October 25, 2006 and October
25 30, 2006. The data for the October 25, 2006 inspection indicates that it was performed at New
26 Age Auto by Mario Rivas, and that it failed inspection due to high emissions (Gross Polluter)
27 and a malfunctioning "check engine" light.

28 ///

1 43. The data indicated that a second inspection was performed at New Age
2 Auto by Mario Rivas on October 27, 2006, at 10:24 a.m., but this inspection was aborted. A
3 third inspection was then performed, at 10:55 a.m. on October 27, 2006, again by Mario Rivas of
4 New Age Auto. The 1992 Toyota passed the "check engine" inspection, but the emissions were
5 still high (Gross Polluter).

6 44. A fourth inspection was performed by Mario Rivas of New Age Auto on
7 October 28, 2006, at 8:30 a.m.. The overall results were "pass," but a certificate was not issued.
8 A fifth inspection was performed on October 30, 2007, at 9:07 a.m. The fifth inspection was
9 performed at Smogs Just Smogs VII by Ahmed Milkan, with the overall results of "pass."
10 Certificate No. VB783503 was issued at this fifth inspection.

11 45. On October 31, 2006, the 1992 Toyota was returned to Representative
12 Gauronski at the Rialto Documentation Laboratory. Representative Gauronski determined that
13 the exhaust gas recirculation valve vacuum modulator and the oxygen sensor (the parts that
14 needed to be replaced for the 1992 to pass the smog test) had indeed been replaced. However,
15 Representative Gauronski also found that the following parts were replaced unnecessarily: spark
16 plugs, spark plug wires, distributor cap, ignition rotor, air filter, and fuel filter.

17 **EIGHTH CAUSE OF ACTION**

18 **(False and Misleading Statements)**

19 46. Respondent is subject to disciplinary action under Code section 9884.7,
20 subsection (a)(1); Code section 9884.7, subsection (a)(8); Health and Safety Code section 44016;
21 and California Code of Regulations, title 16, section 3371, for making false and misleading
22 statements to Operator Cole on or about October 25, 2006 to October 30, 2006, in order to entice
23 him to authorize unnecessary repairs to the 1992 Toyota.

24 **NINTH CAUSE OF ACTION**

25 **(Subletting Work Without Customer Consent)**

26 47. Respondent is subject to disciplinary action under Code section 9884.7,
27 subsection (a)(6), and California Code of Regulations, title 16, section 3340.15, subsection (i),
28 for subletting work without the customer's consent. Specifically, Respondent sublet a smog

1 check inspection to a Test-Only station named Smogs Just Smogs VII, and increased the bill by
2 \$60.00, without first obtaining the customer's consent and authorization.

3 **TENTH CAUSE OF ACTION**

4 **(Performing Unnecessary Repairs)**

5 48. Respondent is subject to disciplinary action under Code section 9884.7,
6 subsection (a)(6); and California Code of Regulations, title 16, sections 3340.30, subsection (a)
7 and 3340.41, subsection (d), for performing unnecessary repairs on the 1992 Toyota, specifically,
8 the unnecessary replacement of spark plugs, distributor cap, ignition wires, ignition rotor, and the
9 air and fuel filters.

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

4 1. Revoking or suspending Automotive Repair Dealer Registration Number
5 AC 182754, issued to Respondent;

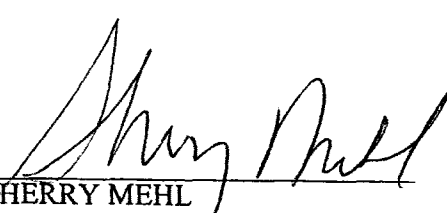
6 2. Revoking or suspending Smog Check Test and Repair Station License
7 Number RC 182754, issued to Respondent;

8 3. Revoking or suspending Smog Check Technician License Number EA
9 022565, issued to Respondent;

10 4. Ordering Respondent to pay the Bureau of Automotive Repair the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3; and

13 5. Taking such other and further action as deemed necessary and proper.
14

15 DATED: 11-27-07

16
17
18 
19 SHERRY MEHL
20 Chief
21 Bureau of Automotive Repair
22 Department of Consumer Affairs
23 State of California
24 Complainant

24 LA2007600977

25 60241865.wpd
26
27
28